

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation against

Case No. 10-2008-189417

GERALD EUGENE LAKE, M.D.

OAH No: 2008090025

**Physician's and Surgeon's Certificate
No. G 20748**

Petitioner.

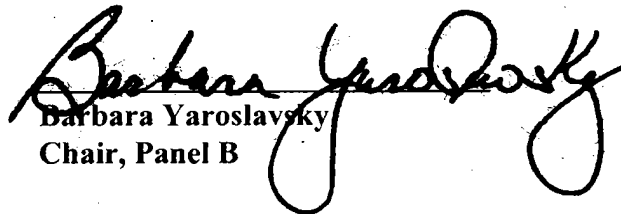
DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby accepted and adopted by the Medical Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective at 5:00 p.m. on April 6, 2009.

DATED March 5, 2009

MEDICAL BOARD OF CALIFORNIA


Barbara Yaroslavy
Chair, Panel B

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DEPARTMENT OF CONSUMER AFFAIRS
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In the Matter of the Accusation against:

GERALD EUGENE LAKE, M.D.,

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G 20748

Respondent.

Case No. 10-2008-189417

OAH No. 2008090025

PROPOSED DECISION

Administrative Law Judge Greer D. Knopf, State of California, Office of Administrative Hearings, heard this matter in San Diego, California, on January 13, 2009.

Susan Fitzgerald, Deputy Attorney General, represented complainant Barbara Johnston, Executive Director, Medical Board of California, Department of Consumer Affairs, State of California.

David Rosenberg, Attorney at Law, represented respondent Gerald Eugene Lake, M.D. who was also present at the hearing.

The matter was submitted on January 13, 2009.

FACTUAL FINDINGS

1. Accusation number 10-2008-189417, dated September 5, 2008, was filed by complainant, Barbara Johnston (complainant), in her official capacity as Executive Director, Medical Board of California, Department of Consumer Affairs, State of California against respondent Gerald Eugene Lake, M.D. (respondent). Respondent filed a Notice of Defense dated September 11, 2008 requesting a hearing in this matter. The proceeding herein followed.

2. Respondent holds Physician and Surgeon's Certificate number G 20748 issued by the Medical Board of California (the Board) on July 13, 1971. Respondent's license is

due to expire on April 30, 2010, unless renewed. In the 27 years that respondent has held a license, respondent's medical license has not been disciplined by the Board.

3. On July 14, 2000, in the Superior Court of California, County of San Diego, San Diego Judicial District, case number 37480, respondent pleaded guilty to and was convicted of a violation of Vehicle Code 23152, subdivision (a). This was a misdemeanor conviction that arose from respondent's arrest for driving under the influence of alcohol on December 12, 1999. The court sentenced respondent to serve 180 days in County Jail and suspended that sentence ordering respondent to five years probation with standard conditions for an alcohol-related offense. These conditions included, among others things, that respondent not drive with any alcohol in his system or on his breath and submit to blood, breath or urine test when stopped by a peace officer for suspicion of driving under the influence. The court also ordered respondent to complete a six-month long First Conviction Program, participate in a public service program for ten days, complete a MADD program, and pay fines and restitution in the amount of \$1,400.00. The court further restricted respondent driver's license for 90 days allowing him to drive only to and from work and to and from his court ordered programs.

4. On July 23, 2008, in the Superior Court of California, County of San Diego, San Diego Judicial District, case number M040600, respondent pleaded guilty to and was convicted of a violation of Vehicle Code section 23152, subdivision (b) for driving while under the influence of alcohol with a prior violation of Vehicle Code section 23152, subdivision (a). This is a crime that, by virtue of the facts and circumstances surrounding the crime, is substantially related to the duties, functions, and qualifications of a licensed physician and surgeon. The court sentenced respondent to five years summary probation and ordered him to serve 96 hours in custody through the work release program. The court also ordered respondent to complete the Multiple Offender Program for alcohol-related offenders and complete a MADD program again as well as pay fines and restitution.

5. Respondent's 2008 criminal conviction arose out of respondent's arrest on January 14, 2008. On that date, respondent had a cocktail with vodka and cranberry juice and then later he got in his car and drove his vehicle to get something to eat at approximately 2:00 a.m. in San Diego. A police officer observed respondent driving erratically. The officer saw respondent's vehicle drifting in and out of his lane. The officer then saw respondent almost run into the center median strip and then suddenly go into the left hand lane to turn. She activated her lights and pulled respondent over. The officer had respondent exit his vehicle and observed respondent to be very unsteady on his feet. Respondent had glazed red watery eyes and smelled of alcohol. His speech was slurred when he spoke to her and he was swaying with trouble maintaining his balance. The officer administered the field sobriety test and respondent could not adequately perform any of the tasks required in the test. At one point during the sobriety test, respondent almost fell over so the officer stopped the test at that point because she thought it would be a danger to respondent to continue. The officer had no doubt in her mind that respondent was "seriously intoxicated." Respondent put himself and the public in danger by driving his vehicle while he was intoxicated.

6. The officer placed respondent under arrest and searched him incident to the arrest. The officer found a small, bottle of video head cleaner in respondent's pocket. In her experience, video head cleaner is often used for "huffing." Huffing is the process of inhaling a substance into the mouth in a quick fashion as an inhalant for the purpose of obtaining a quick euphoric state of intoxication that is generally short lived. So the officer stated to respondent, "You are huffing." Respondent answered the officer by saying "Only once, just tonight." This was an admission by respondent that he had used the video cleaner once that night as an inhalant for intoxication purposes.

7. Both respondent and the arresting police officer testified at the hearing. Respondent claimed at the hearing that he had one vodka drink that evening and was not intoxicated and was not driving erratically when he left his house to get something to eat. He testified that he worked at home that night until 11:00 p.m. when he left in his car to get something to eat. He drove a short distance to a restaurant that was closed and then to another nearby restaurant that he thought would be open. It was then when he was approaching the second restaurant that he was pulled over by the police officer. However, respondent was arrested at 2:10 a.m., so his recollection of the timing of the night is incorrect. Respondent also did not believe he was pulled over by the police, but claimed that he pulled his car over and parked first, and then he was approached by the police vehicle. Respondent also claimed that he did not admit to the officer that he had been huffing that night and claimed that he only had the video cleaner in his pocket because someone at a bar had given it to him two nights prior for use on respondent's video player. It is simply not believable that respondent would have carried this video cleaner in his pants pocket for two days in light of the more credible testimony of the officer regarding the video cleaner. The officer was also very clear that she did activate her lights and pull respondent over. She described respondent as seriously intoxicated at the time and she described the admission he made to her regarding his use of the video cleaner for huffing. Respondent was intoxicated and unable to follow the officer's directions. In light of his intoxicated state, his recollection of events that night is suspect and is not accepted by this administrative court. The testimony of the officer was detailed, credible, and supported by her report and is accepted by this court as a more accurate account of what happened that night.

8. Respondent has been licensed as a physician in California since 1971, and has had no prior disciplinary action taken against him. He practiced with a specialty in psychiatry until 2007 when he voluntarily suspended his practice for a time to help his son with a business endeavor. Over the years, respondent has had a varied practice in emergency psychiatry, child psychiatry, and adult psychiatry. He has never had any of his hospital privileges restricted, suspended, or revoked.

9. Respondent has begun the rehabilitation process since his last arrest and conviction. He believes he has never been more than a social drinker, but he has not had an alcoholic beverage since his last arrest on January 14, 2008. He has complied with each of the terms of his criminal probation, including attending a multiple DUI offender program, which includes attending Alcoholics Anonymous (AA) meetings and individual and group therapy sessions, and attending a MADD seminar. Much of this is still ongoing since respondent is still serving out his criminal probation. For example, respondent has attended

17 of the 35 group therapy sessions and 17 of the 78 AA meetings ordered by the court. Respondent is complying in a timely fashion, but he has a long way to go until he has completed all of the requirements of his criminal probation. Respondent is scheduled to be on probation until July 2013. He has completed the requirement that he attend the MADD seminar that was also ordered after his 2000 conviction, and he found this program very informative and useful. He completed his public work project in lieu of serving 96 hours in custody by cleaning areas of the County Sheriff's Office and the County Jail as well as cleaning trash and shrubbery along the highway and at UCSD.

10. Respondent expressed at the hearing that he believes that he has learned from this experience. He has learned that he does not have good judgment when he drinks so he stopped drinking. He continues to attend AA meetings, but could not identify the first five steps of the 12-step program and he did not discuss having a sponsor. Much of respondent's testimony regarding his current personal, business, and professional activities were very vague, and non-specific. Respondent appeared to be trying not to reveal much information about what is going on in his life at this time. This makes it difficult to determine his level of commitment to rehabilitation and his commitment to living a clean and sober lifestyle. Respondent does not want to continue to have an active medical practice, but he wants to be able to end his career with a clean record. However, he has not made a sufficient showing at this point of full rehabilitation. His last arrest and his last drink was just one year ago and he remains on criminal probation for four more years with much work left to be done under the terms of that probation. Everything respondent has done to date has been court ordered as part of that probation. It is too soon to know if respondent will continue to stay on course. He needs to establish a longer track record of maintaining a sober and law-abiding lifestyle. Therefore, respondent may continue to be entrusted with a medical license only subject to strict terms and conditions of probation in order to ensure that the public interest is protected.

LEGAL CONCLUSIONS

1. Cause exists to discipline respondent's physician's and surgeon's certificate pursuant to Business and Professions Code sections 2237 and 2236 in that complainant has been convicted of crimes that are substantially related to the qualifications, functions, and duties of a licensee, as set forth in Findings 2-10.

2. Cause exists to discipline respondent's physician's and surgeon's certificate pursuant to Business and Professions Code sections 2227 and 2239 in that respondent used alcohol in a manner so as to be a danger to himself and to members of the public by driving while intoxicated, as set forth in Findings 2-10.

3. Cause exists to discipline respondent's physician's and surgeon's certificate pursuant to Business and Professions Code sections 2227 and 2239 in that respondent has sustained two criminal convictions for driving under the influence of alcohol as set forth in Findings 2-10.

ORDER

Respondent Gerald Eugene Lake's physician's and surgeon's certificate number G 20748, issued by the Medical Board of California, is hereby revoked. However, revocation is stayed and respondent is placed on probation for five years upon the following terms and conditions:

1. Alcohol - Abstain From Use

Respondent shall abstain completely from the use of products or beverages containing alcohol.

Respondent shall attend Alcoholics Anonymous meetings, or some equivalent program approved in writing by the Board, once per week.

2. Controlled Substances - Abstain From Use

Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawful prescription medications, respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name and strength; and issuing pharmacy name, address, and telephone number.

3. Biological Fluid Testing

Respondent shall immediately submit to biological fluid testing, at respondent's expense, upon request of the Board or its designee. Prior to practicing medicine, respondent shall, at respondent's expense, contract with a laboratory or service - approved in advance by the Board or its designee - that will conduct random, unannounced, observed, urine testing a minimum of four times each month. The contract shall require results of the urine tests to be transmitted by the laboratory or service directly to Board or its designee within four hours of the results becoming available. Failure to maintain this laboratory or service during the period of probation is a violation of probation. A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and respondent. Failure to submit to or comply with the time frame for submitting to, or failure to complete the required biological fluid testing, is a violation of probation.

4. Notification

Prior to engaging in the practice of medicine, the respondent shall provide a true copy of the Decision(s) and Accusation(s) to the Chief of Staff or the Chief Executive Officer at

every hospital where privileges or membership are extended to respondent, at any other facility where respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

5. Supervision of Physician Assistants

During probation, respondent is prohibited from supervising physician assistants.

6. Obey All Laws

Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

7. Quarterly Declarations

Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. Probation Unit Compliance

Respondent shall comply with the Board's probation unit. Respondent shall, at all times, keep the Board informed of respondent's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee.

Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Respondent shall not engage in the practice of medicine in respondent's place of residence. Respondent shall maintain a current and renewed California physician's and surgeon's license.

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

9. Interview with the Board or its Designee

Respondent shall be available in person for interviews either at respondent's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

10. Residing or Practicing Out-of-State

In the event respondent should leave the State of California to reside or to practice respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; Probation Unit Compliance; and Cost Recovery.

Respondent's license shall be automatically cancelled if respondent's periods of temporary or permanent residence or practice outside California totals two years. However, respondent's license shall not be cancelled as long as respondent is residing and practicing medicine in another state of the United States and is on active probation with the medical licensing authority of that state, in which case the two year period shall begin on the date probation is completed or terminated in that state.

11. Failure to Practice Medicine - California Resident

In the event respondent resides in the State of California and for any reason respondent stops practicing medicine in California, respondent shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve respondent of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding thirty calendar days in which respondent is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

Respondent's license shall be automatically cancelled if respondent resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

12. Completion of Probation

Respondent shall comply with all financial obligations (e.g., cost recovery, restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, respondent's certificate shall be fully restored.

13. Violation of Probation

Failure to fully comply with any term or condition of probation is a violation of probation. If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against respondent during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

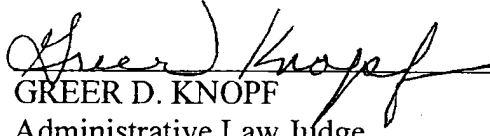
14. License Surrender

Following the effective date of this Decision, if respondent ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, respondent may request the voluntary surrender of respondent's license. The Board reserves the right to evaluate respondent's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, respondent shall within 15 calendar days deliver respondent's wallet and wall certificate to the Board or its designee and respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation and the surrender of respondent's license shall be deemed disciplinary action. If respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. Probation Monitoring Costs

Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

DATED: 2-17-09


GREER D. KNOPF
Administrative Law Judge
Office of Administrative Hearings

EDMUND G. BROWN JR., Attorney General
of the State of California
STEVEN V. ADLER
Supervising Deputy Attorney General
SUSAN FITZGERALD, State Bar No. 112278
Deputy Attorney General
110 West "A" Street, Suite 1100
San Diego, CA 92101

P.O. Box 85266
San Diego, CA 92186-5266
Telephone: (619) 645-2066
Facsimile: (619) 645-2061

Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 10-2008-189417

GERALD EUGENE LAKE, M.D.

230 W Laurel St, Ste. 704
San Diego, CA 92101
Physician's and Surgeon's Certificate No. G
20748

Respondent.

ACCUSATION

Complainant alleges:

PARTIES

1. Barbara Johnston (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs¹.

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1. California Business & Professions Code section 2002, as amended and effective January 1, 2008, provides that, unless otherwise expressly provided, the term "board" as used in the State Medical Practice Act (Cal. Bus. & Prof. Code §§2000 et seq.) means the "Medical Board of California," and references to the "Division of Medical Quality" and "Division of Licensing" in the Act or any other provision of law shall be deemed to refer to the Board.

2. On or about July 13, 1971, the Medical Board of California issued Physician's and Surgeon's Certificate Number G 20748 to Gerald Eugene Lake, M.D. (Respondent). The certificate will expire on April 30, 2010 unless renewed.

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

A. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Division deems proper.

B. Section 2236 of the Code states in pertinent part:

"(a) The conviction of any offense substantially related to the qualifications, functions, or duties of a physician and surgeon constitutes unprofessional conduct within the meaning of this chapter [Chapter 5, the Medical Practice Act]. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred.

"... "

"(c) . . . The division may inquire into the circumstances surrounding the commission of a crime in order to fix the degree of discipline or to determine if the conviction is of an offense substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(d) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section and Section 2236.1. The record of conviction shall be conclusive evidence of the fact that the conviction occurred."

C. Section 2239 of the Code states:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to

1 the licensee, or to any other person or to the public, or to the extent that such use impairs
2 the ability of the licensee to practice medicine safely or more than one misdemeanor or
3 any felony involving the use, consumption, or self-administration of any of the substances
4 referred to in this section, or any combination thereof, constitutes unprofessional conduct.
5 The record of the conviction is conclusive evidence of such unprofessional conduct.
6 “(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
7 deemed to be a conviction within the meaning of this section. The Division of Medical
8 Quality may order discipline of the licensee in accordance with Section 2227 or the
9 Division of Licensing may order the denial of the license when the time for appeal has
10 elapsed or the judgment of conviction has been affirmed on appeal or when an order
11 granting probation is made suspending imposition of sentence, irrespective of a
12 subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such
13 person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting
14 aside the verdict of guilty, or dismissing the accusation, complaint, information, or
15 indictment.”

16 **CHARGES AND ALLEGATIONS**

17 **FIRST CAUSE FOR DISCIPLINE**

18 (July, 2008 Conviction of a Substantially Related Crime)

19 4. Respondent is subject to disciplinary action under section 2227 and 2236 for
20 conviction of a crime substantially related to the qualifications, functions, or duties of a physician
21 and surgeon, as more particularly alleged below:

22 A. On or about July 23, 2008 in San Diego Superior Court Case No.M040600,
23 *People v. Gerald Eugene Lake*, Respondent pled guilty to violating California Vehicle Code
24 section 23152, subdivision (b), (driving with a blood alcohol level of 0.08 or more) with a prior
25 violation of Vehicle Code section 23152 subdivision (a) in 2000.

26 B. Respondent was sentenced to five years summary probation, 96 hours of custody
27 via the work release program, to pay fines, and to attend both the Multiple Offender Program and
28 MADD, among other terms and conditions.

1 C. The facts and circumstances surrounding the above conviction are that on or about
2 January 14, 2008 at about 2:10 a.m. Respondent was driving his vehicle in San Diego when he
3 was observed by a police officer to be driving very slowly, drifting, weaving, and almost striking
4 a cement median strip. When stopped by the officer, and having exited the vehicle, Respondent
5 was observed to be swaying on his feet; his speech was slurred; and he could not pass field
6 sobriety tests. While searching him incident to arrest, the officer found a small, palm size, open
7 bottle of video head cleaner in Respondent's pocket. The officer stated to Respondent: "You are
8 huffing." Respondent replied, "Only once. Just tonight." Respondent also admitted drinking
9 vodka with cranberry juice earlier in the evening.

10 SECOND CAUSE FOR DISCIPLINE

11 (Use of Alcohol So As to be a Danger to Self or Others)

12 5. Respondent is subject to disciplinary action under section 2227 in conjunction
13 with 2239 subdivision (a) for using alcohol in a manner so as to be a danger to himself and to the
14 public, as more particularly alleged in paragraph 4 (C) above and incorporated herein by
15 reference.

16 THIRD CAUSE FOR DISCIPLINE

17 (Conviction of Two Misdemeanors Involving the Use of Alcohol)

18 6. Respondent is subject to disciplinary action under section 2227 in conjunction
19 with section 2239, additionally, in that he has sustained two misdemeanor convictions for DUI,
20 as more particularly alleged below:

21 A. Paragraph 4 (A) and (B) above is re-alleged and incorporated herein by
22 reference.

23 B. On or about July 14, 2000, in San Diego Superior Court Case No. 37480,
24 Respondent was convicted of violating California Vehicle Code section 23152 subdivision (a).

25 FACTOR IN AGGRAVATION

26 7. At the time of his arrest on January 14, 2008, Respondent admitted to the
27 "huffing" [inhaling] of video head cleaner that evening.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Medical Board of California issue a decision:

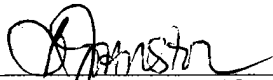
4 1. Revoking or suspending Physician's and Surgeon's Certificate Number G 20748,
5 issued to Gerald Eugene Lake, M.D.;

6 2. Revoking, suspending or denying approval of Gerald Eugene Lake's, M.D.'s
7 authority to supervise physician's assistants, pursuant to Code section 3527;

8 3. Ordering Gerald Eugene Lake, M.D., to pay the Board the reasonable cost of
9 probation monitoring, if he is placed on probation; and

10 4. Taking such other and further action as deemed necessary and proper.

11
12 DATED: September 5, 2008

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14 
15 BARBARA JOHNSTON
16 Executive Director
17 Medical Board of California
18 Department of Consumer Affairs
19 State of California
20 Complainant

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